

Group IV, claims 10-11, drawn to a crustacean stuffing.

In response to this requirement, Applicants hereby elect Group I, claims 1-5 drawn to a method for removing meat from a hard-shelled crustacean. This election is with traverse.

Remarks

The present application is the national phase of a PCT application. Thus, the rules set forth in 37 CFR 1.475 to 1.477 are utilized in determining whether a Restriction Requirement is proper. The Examiner should note MPEP 1896 (IV) wherein:

"U.S. national stage applications (which entered by national stage from international applications after compliance with 35 USC 371) are subject to unity of invention practice in accordance with 37 CFR 1.475 and 1.499."

Basically, the PCT unity of invention standard is used in such national phase cases. As set forth in 37 CFR 1.475(a), an International and the National Stage Application relate to one another. In the prosecution for the International PCT Application, no restriction was issued and all claims were considered in a single application. The same standards should apply in the U.S. Patent and Trademark Office examination. It is respectfully submitted that the claims in the present invention are linked so as to form a general inventive concept. While the Examiner has noted

certain differences between the claims, it is still this inventive concept which permeates the different claims of the application. Accordingly, it is respectfully requested that the requirement given by the Examiner be reconsidered and withdrawn.

Even using the US (not the PCT standard), the Restriction Requirement is improper. It is respectfully submitted that it should be no undue burden on the Examiner to consider all claims in the single application.

Applicants respectfully submit that the Examiner has failed to meet the required burden of showing that the groups of claims are independent and distinct, as required by law. 35 USC §121 specifically states that the Commissioner may require the application to be restricted if it contains two or more "independent and distinct" inventions claimed in one application. 37 CFR §1.141 and §1.142 further repeat the language that the two or more inventions must be "independent and distinct".

MPEP §802.01 provides specific definitions of the meaning of the terms "independent" and "distinct". MPEP §802.01 states that the terms "independent" and "distinct" do not mean the same thing, but in fact have very different meanings. The term "independent", as set forth in MPEP §802.01, means that "there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect". The term

"distinct" means that "two or more subjects as disclosed are related, for example, as combination and part (sub-combination) thereof, ... and are patentable over each other".

The Examiner has provided separate classifications for the groups, and by stating reasons why the groups are related. However, the Examiner has not met the burden of proving that the groupings are "independent" as required by the United States Code, the Code of Federal Regulations, and the Manual of Patent Examining Procedure. Accordingly, Applicants respectfully submit that the requirement for restriction is improper, and respectfully request that the requirement for restriction be withdrawn.

Applicants respectfully submit that MPEP §808.01 states that inventions are independent "where they are not connected in design, operation, or effect under the disclosure of the particular application under consideration" and that "[t]his situation, except for species, is but *rarely present*, since persons will seldom file an application containing disclosures of independent things. (emphasis added). MPEP §806.04 cites the intended meaning of independent inventions by citing specific examples of independence, stating "[a]n article of apparel such as a shoe, and a locomotive bearing would be an example. A process of painting a house and a process of boring a well would be a second example."

Applicants respectfully submit that the groups set forth by the Examiner cannot be considered "independent", since the specification clearly discloses the relationship between the subject matter of the claims of these groupings, and thus, the groupings are not wholly unrelated or "independent". Therefore, Applicants respectfully submit that the instant application is not properly restrictable, since the Examiner has not shown that the inventions are "independent" as required by the U.S. Statute.

It is specifically noted that Group I, claims 1-5 and Group II, claims 6-7, should be combined into a single group. Although the method of claim 1 does not require vacuum evisceration, back flushing and then stuffing of a crustacean, it is respectfully submitted that these steps could easily be performed in conjunction with a method of the first claim group. The fact that claim 1 does not explicitly require vacuum evisceration, back flushing and then stuffing of a crustacean does not necessarily imply that the steps could not be performed.

In addition, Group III, claims 8-9, and Group IV, claims 10-11, should also be treated as a single group. Although the product of claim 4 does not require the presence of the crustacean shell, the shell of the crustacean is in fact filled with the same contents as the stuffing of claim 10. As a result, a search for prior art for

claims 8 or 10 would necessarily involve searching for art for the other claim.

Finally, it is respectfully submitted that the product defined in Groups III and IV is clearly created by the method described by Groups I and II. As a result, although the inventions are found in different sub-classes, they should be included in the same application, as a search for one of the claim groups will necessarily require a search of the art in all of the identified sub-classes.

Accordingly, in view of the above remarks, reconsideration and withdrawal of the requirement for restriction, and an action on all of the claims in the application, are respectfully requested.

In the event that the Examiner persists in this requirement, Applicants reserve the right to file a Divisional application at a later time, if so desired.

In the event there are any outstanding matters remaining in this application, the Examiner is invited to contact the undersigned (703) 205-8000 in the Washington, D.C. area.

Favorable reconsideration and an early Notice of Allowance are earnestly solicited.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), the Applicants respectfully petition for a one (1) month extension of time for

filling a response in connection with the present application and the required fee of \$110.00 is attached herewith.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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